

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.68 OF 2016

Vishal Budhanand Thorat,
Age 28 yrs., Occ. Labour,
R/o Umbadga, Tq. Ausa,
Dist. Latur.

... Appellant

... **Versus** ...

The State of Maharashtra
Through Police Station, Ausa,
Tq. Ausa, Dist. Latur.

... Respondent

...

Mr. Y.B. Bolkar, Advocate for appellant

Mr. A.M. Phule, APP for respondent

...

**CORAM : SMT. VIBHA KANKANWADI
Y.G. KHOBRADE, JJ.**

RESERVED ON : 23rd MARCH, 2023

PRONOUNCED ON : 03rd MAY, 2023

JUDGMENT : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present appeal has been filed by the original accused in Sessions
Case No.8/2015. He has been held guilty for committing murder of his wife.

While awarding sentence for the offence punishable under Section 302 of the Indian Penal Code the learned Sessions Judge, Latur on 28.01.2016 has sentenced him to suffer imprisonment for life and to pay fine of Rs.2,000/- (Rupees Two Thousand only), in default to suffer rigorous imprisonment for four months.

2 The prosecution story is that one Rahul Ramdas Tarkase, who was serving as Assistant Police Inspector with AUSA Police Station, Dist. Latur, had received phone call from one Shesherao Lanjare, r/o Umbadga (Bk) informing that a dead body of a lady is lying in the field of one Dipak Thorat of Umbadga (Bk) village and, therefore, API Mr. Tarkase with his team had gone to the spot. Inquest Panchnama as well as spot panchnama was prepared with the help of two panchas. At that point itself the land owner Dipak Thorat gave information to Police Station and, therefore, Accidental Death under Section 174 of the Code of Criminal Procedure was registered vide A.D. No.46/2014. The postmortem was got done on 23.10.2014 and the probable cause of death of the said lady was given as “the most probable cause of death is asphyxia due to smothering”. The lady was around 20-25 years old and prior to 18.45 hours of 22.10.2014 some unknown person had committed her murder by pressing her face and nose and then left the dead body in open space, thereby screening the real offender and, therefore, on

behalf of State API Mr. Tarkase lodged First Information Report against unknown person. It came to be registered for the offence under Section 302, 201 of the Indian Penal Code vide Crime No.177/2014. During the course of the investigation efforts were made to establish the identity of the dead body. Press Note was given along with the photograph. It was then established that the deceased was Neelam Vishal Thorat i.e. wife of the present appellant. Thereafter statements of the witnesses were recorded. It appears from the prosecution story that the family members of deceased Neelam had caught hold of the accused, who was at his sisters place at Vikram Nagar, Latur. When he was asked about the whereabouts of Neelam, he made confession before them that he has killed Neelam. The family members contended that Neelam and accused left their house (parents of deceased) around 6.00 to 6.30 p.m. from Ambedkar Chowk together on 21.10.2014, by saying that they would buy ticket for Pune and would go to Pune. However, they both did not return and attempts to reach to the mobile of the accused failed. After the alleged confession was given the accused was produced in the Police Station, thereupon he was arrested. Supplementary statements of the witnesses were recorded. The accused had disclosed that he had kept his mobile in the house of his aunt and, therefore, the said mobile was seized by drawing panchnama. The clothes of the deceased, clothes of accused and other articles which were seized during the course of the investigation were

sent for chemical analysis. It is also the prosecution case that while the accused was in jail he had given letter on 26.12.2014 in the name of Suresh Machchhindra Satpute – father of the deceased, wherein also he had confessed about the murder. That letter came to be seized by drawing panchnama. After the completion of investigation charge sheet was filed before learned Judicial Magistrate First Class, AUSA.

3 After the committal of the case charge was framed for the offence punishable under Section 302 of the Indian Penal Code only. The trial was conducted after accused pleaded not guilty. The prosecution has examined in all 13 witnesses to bring home the guilt of the accused. After hearing both sides and perusing the evidence on record, the learned Sessions Judge, Latur has convicted the accused, as aforesaid. Hence, the present appeal.

4 Heard learned Advocate Mr. Y.B. Bolkar for the appellant and learned APP Mr. A.M. Phule for the respondent.

5 It has been vehemently submitted on behalf of the appellant that the case of the prosecution is based on circumstantial evidence and alleged confession. In order to prove the circumstantial evidence; the prosecution ought to have brought on record the entire chain of events and each

circumstance of the said chain should have pointed out towards the accused as author of the crime. Here, except the statement of PW 2 Aruna – mother of deceased that she had seen accused as well as deceased Neelam leaving her house together on 21.10.2014, by saying that they would go to Pune and would buy ticket for Pune, there is nothing on record. Nobody, who had seen them together from that point till agricultural land of Dipak Thorat in Umbadga (Bk), has been examined. From the testimony of PW 12 API Mr. Tarkase what could be gathered is that he had given letters to the Auto Rickshaw Union as to whether anybody had dropped the accused and deceased near the said place, there is no other piece of evidence. The said letters to the Auto Rickshaw Union were also given on the basis of alleged information that was given by the accused under his interrogation. According to PW 2 Aruna, accused and deceased had left her house around 6.00 to 6.30 p.m. Therefore, it was not so dark, so that nobody can see them going together. The dead body has been found on 22.10.2014 around 18.45 hours. Therefore, there was no proximity and, therefore, testimony of PW 2 Aruna cannot be considered on the point of last seen together. In his examination-in-chief PW 12 API Mr. Tarkase has deposed that the distance between the house of parents of deceased in Bouddha Nagar, Latur and the place of incident in Umbadga (Bk) is about 12-14 k.ms., and it would take about half an hour to cover the said distance by auto rickshaw. Under such

circumstance also PW 2 Aruna cannot be considered to be the witness on the point of last seen together. Learned Advocate for the appellant has relied on the decision in **Rishipal vs. State of Uttarakhand** reported in (2013) 12 Supreme Court Cases 551, **Raju alias Rajendra Prasad vs. State of Rajasthan** reported in 2022 SCC OnLine SC 1242, **Boby vs. State of Kerala** reported in 2023 SCC OnLine SC 50 and **Jabir and others vs. State of Uttarakhand** reported in 2023 SCC OnLine SC 32 on the point of circumstantial evidence. In all these cases the principles for considering circumstantial evidence in earlier cases have been reiterated. In the nutshell, the ratio is that in circumstantial evidence based cases, each incriminating circumstances must be clearly established by reliable and clinching evidence and the circumstances proved must form a chain of events from which the irresistible conclusion of the accused's guilt can be safely drawn.

6 It has been further submitted on behalf of the appellant that the evidence of PW 2 Aruna, PW 3 Suresh, PW 4 Anita (paternal aunt of deceased), PW 5 Vinod Khatke shows that accused had allegedly confessed before them that he has committed murder of his wife Neelam. In **Sk. Yusuf vs. State of West Bengal** reported in (2011) 11 SCC 754, **Sahadevan and another vs. State of Tamil Nadu** reported in (2012) 6 SCC 403 and **Nikhil Chandra Mondal vs. State of West Bengal** [2023 LiveLaw (SC) 171] Hon'ble

Supreme Court has observed that -

“The Court while dealing with a circumstance of extra-judicial confession must keep in mind that it is a very weak type of evidence and requires appreciation with great caution. Extra-judicial confession must be established to be true and made voluntarily and in a fit state of mind. The words of the witness must be clear, unambiguous and clearly convey that accused is the perpetrator of the crime. The extra-judicial confession can be accepted and can be the basis of a conviction if it passes the test of credibility.”

If this test is applied to the testimony of all these witnesses, then, it can be seen that when the accused was approached when he was in the house of his sister, there was mob of 100-150 persons. In her cross-examination PW 2 Aruna has admitted that the accused was beaten by the crowd by fist blows, kicks and also by belt and thereafter he was taken to the Police Station. Under the said circumstance, it cannot be said that the alleged confession was voluntary in nature. PW 4 Anita – the aunt appears to have taken lead to catch the accused and beat him. PW 5 Vinod is giving slightly different story. He says that on 24.10.2014 there was birthday of son of sister of accused and, therefore, accused had gone to his sister's place. PW 5 Vinod Khatke also attended. When he asked, where is Neelam, accused told that she is at Pune. PW 5 Vinod wanted her mobile number, but then accused told him that she is not having mobile phone. He found that the

accused has given evasive reply to their queries. Then he directly says that he had brought accused to the house of his in-laws and then they had shown accused the newspaper item and the photographs and thereafter the accused confessed that he has killed the deceased. He has not stated, as to what made him to bring accused to the house of in-laws. He appears to be a chance witness. But then in his cross-examination he has also admitted that people, who had gathered in the house of PW 2 Aruna, were shouting that accused should be killed. The alleged confession is not voluntary and, therefore, the said extra judicial confession cannot be accepted.

7 Learned Advocate for the appellant further relied on the decision in **Santosh Balu Mali vs. State of Maharashtra** reported in **2022 SCC OnLine Bom 2853**, wherein this Court has held that when the case is based on circumstantial evidence, prosecution should prove the motive. Here, in this case, the motive is absent. As per PW 2 Aruna and PW 3 Suresh, accused had borrowed loan of Rs.3,00,000/- from various persons when he was residing with his parents, but then his parents asked the accused to repay the said loan by his own means and, therefore, Neelam and accused started residing with the parents of Neelam. It was disclosed by accused that he has purchased plot at Pune by taking loan from various persons and thereafter he wanted to sell it. Therefore, under the pretext that Neelam's signatures are

required, he had taken her along with him. This motive is absolutely not appealing.

8 The learned Advocate for the appellant lastly submitted that PW 1 Shriram Bembde – the panch witness to the spot panchnama has stated that he has not signed the panchnama in the field. PW 6 Vilas More is the panch to the discovery panchnama under Section 27 of the Indian Evidence Act, whereupon the accused had discovered mobile from the house is his aunt. He has stated that he had not heard what the accused had stated to the police. PW 7 Krishnabai Charakpalle is the panch to the inquest panchnama and has stated that she had not gone to the field of Dipak Thorat where the panchnama is stated to have conducted. PW 9 Ravikant Khurape is the landlord, in whose house the appellant was residing, but his testimony is hearsay. PW 10 Shivshankar Gaikwad is the panch witness to the panchnama of seizure of clothes of deceased. PW 11 Savita Thorat is the niece of the accused, but she has not supported the prosecution. Therefore, even though the testimony of PW 8 Dr. Gajanan Motiphale, who has conducted the autopsy and given the Postmortem Report, would lead to the conclusion that death is homicidal in nature; yet, the other evidence on record will not prove the guilt of accused beyond reasonable doubt. PW 8 Dr. Gajanan has rather stated in the cross that death cannot be caused due to pressing of mouth and

nose in the mud. The position of dead body was that she was in prone condition. The learned Trial Judge has failed to consider all these aspects and led to the perverse findings and, therefore, the said Judgment deserves to be set aside.

9 The learned APP strongly relied on the reasons given by the learned Trial Judge and submitted that all the circumstances have been proved by the prosecution. PW 2 Aruna is the person to whom accused as well as deceased had told around 6.00 to 6.30 p.m. on 21.10.2014 that they would be going to buy ticket for Pune and they went together. Thereafter the accused did not return and it can be seen from the evidence that he has not even made inquiry about Neelam and his son. The testimony of PW 8 Dr. Gajanan would be sufficient to prove that the death is homicidal in nature, as the death was due to asphyxia due to smothering. When the accused was shown with the photographs of deceased, then he had confessed. Though extra judicial confession is a weak kind of evidence; yet, all the witnesses, who were present when the confession was made, were consistent in narrating the incident as happened. The learned Trial Judge has rightly relied on Section 106 of the Indian Evidence Act and submitted that no plausible explanation was offered by the accused in his statement under Section 313 of the Code of Criminal Procedure, as to where his wife has

gone. The so called lacuna in investigation cannot give benefit to the accused. The panchnamas have been proved. Further, the letter that was issued by the accused from jail would also speak for itself. Therefore, the learned Trial Judge was justified in arriving at the conclusion that there is evidence beyond reasonable doubt to prove that accused has committed murder of his wife. The Judgment is legal and based on sound principles of law, does not require any interference.

10 Here, the case of the prosecution is based on circumstantial evidence. In all those cases which have been relied by the learned Advocate for the appellant on the point of circumstantial evidence as well as in **Nikhil Chandra Mondal** (supra) reliance has been placed by the Supreme Court on its earlier decision in **Sharad Birdhichand Sarda vs. State of Maharashtra** reported in (1984) 4 SCC 116, wherein it has been held that -

“153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established :

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved'

and 'must be or should be proved' as was held by this Court in Shivaji Sahabrao Bobade vs. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Cri. L.J. 1783] where the observations were made : [SCC para 19, p.807 : SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”

Therefore, it is required to be seen, as to whether the said five golden principles i.e. panchsheel have been fulfilled by the prosecution in this case.

11 The testimony of PW 8 Dr. Gajanan Motiphale and the Postmortem Report Exh.51 would show that there were no external injuries on the person of deceased, however, taking into consideration the internal examinations he had opined that the death was due to smothering. He had found mud particles present in mouth as well as nose. The tongue was impacted between teeth. Cyanosis was present over complete face and ears as well as surrounding neck. Congestion was found in thorax and both the lungs. These findings were sufficient to hold that death of Neelam is homicidal in nature. No doubt, in his cross-examination he has admitted that he is unable to state as to how the asphyxia would have taken place. Unless nose and mouth are totally shut breathing cannot be stopped. Then to the question asked, he has answered that if the pressing of a person's mouth and nose in the soil was for a longer period, then, the breathing can be stopped. But what duration would be required for stopping breathing cannot be told. He also told that it would be dependent upon the force applied for pressing. Mud particles were not found in trachea in the present case, but they were present in nose and mouth. Even if we consider the explanations given by him in his cross-examination, no other conclusion can be drawn than that the death of Neelam was homicidal in nature. The inquest panchnama has also been proved through PW 7 Krishnabai. But then, in cross-examination she has stated that she had not gone to the field of Dipak Thorat. Even if it is

stated that the said inquest panchnama Exh.46 has not been properly proved; yet, it will not affect the fact i.e. proved that death of Nilam was homicidal in nature. Now, it is required to be seen, as to whether the accused can be said to be the author of the crime.

12 Too much extent what has been deposed by the witnesses has already covered in the foregoing paras and, therefore, those facts are not repeated. PW 2 Aruna – mother of the deceased has been examined on two points; 1) on the point of ‘last seen together’ and 2) ‘motive’. We would like to consider the second point i.e. ‘motive’ first. She has stated that Neelam along with accused and their son Vishant came to their house on the occasion of Panchami festival of the year 2014. She has stated that father of the accused had evicted accused and his wife Neelam on account of the fact that accused had borrowed loan of Rs.3,00,000/- from various persons and, therefore, accused should earn and repay the said loan. Accused was telling Neelam that he has purchased a plot at Pune from the said loan amount when she was insisting accused that he should repay the loan. There used to be altercations between them on that count. This has been stated to be the motive for commission of the crime by the accused. We do not find that there was any ill intention on anybody’s part. If the accused had taken loan then it would be his primary duty to repay the same. It appears that there is no

investigation on this point as to from whom the said amount was borrowed by accused and when it was borrowed. It could have been better proved by examining any of the creditors, who had lent the amount to him. Therefore, except the bare words of Aruna there is nothing on record to support her contention that accused had raised loan of Rs.3,00,000/-. Her evidence is also lacking on the point that when Neelam had come to know about raising of loan by her husband and disclosure by the accused to her that he has purchased plot, then, whether there was any attempt to see the documents regarding the purchase of the plot, in whose name that plot was purchased and what was the location of the said plot. It can be seen that it has been kept intentionally vague by saying that accused told that he had purchased plot in Pune from the said loan amount. If the purchase was legal (which could have been revealed during the investigation), there ought to have been a legal document. No such legal document has been tried to be collected. PW 2 Aruna has further deposed that on the day of Diwali on 21st October the accused suggested Neelam that they would go to Pune as her signature would be required for selling plot and thereafter both of them left the house around 6.00 to 6.30 p.m. by saying that they would take ticket for Pune. Thereafter, PW 2 Aruna and the family members were waiting for accused and Neelam to return but they did not return till 8.00 p.m. and thereafter made phone call to accused but his mobile was switched off. Then, she says that she came to

know about the dead body of Neelam lying in Umbadga shivar on 24th October. Thus, it is to be noted that when the prosecution has not come with clear story that the plot was purchased in the name of Neelam and, therefore, her presence/signature was necessary at the time of selling the plot and the said suggestion was accepted by Neelam. Here, in this case, when the said contention is without any permissible and legal document, we cannot infer or presume the existence of such document. Another fact to be noted is that according to this witness, accused and deceased had left the house around 6.00 to 6.30 p.m. It was told by them that they would buy ticket for Pune and PW 2 Aruna was expecting them to be returned by 8.00 p.m. This indicates that neither accused nor Neelam had disclosed it to PW 2 Aruna that they would be going to Pune. They had gone just to buy ticket to Pune. Distance between Latur and Pune has not been brought on record. But certainly it is not the journey of two hours. If accused and Neelam would have told that they were going to Pune, then, PW 2 Aruna would not have waited for them to arrive around 8.00 p.m. Her further examination-in-chief says that she came to know about the murder of her daughter on 24.10.2014. That means, even if we take her case that she had seen accused and Neelam going together on 21.10.2014, but then she has seen the dead body on 24.10.2014. Again going back to the testimony of PW 8 Dr. Gajanan Motiphale, he has not stated what could have been the approximate time of

death. If we consider Postmortem Report Exh.51, it states that rigor mortis was slightly marked all over the body, though no external injuries could be found. Answer to column No.18(a), in which he was asked, as to whether he can say definitely that the injuries shown in column Nos.17 and 18 are ante-mortem or not, has been kept blank. There was no attempt to extract from PW 8 Dr. Gajanan as to what could have been the time of death. Therefore, on the point of 'last seen together', we would like to rely on **Bodhraj vs. State of J & K, [(2002) 8 SCC 45]**, which has been then referred in **Rishipal** (supra), it has been held thus -

“31. The last seen theory comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases....”

In **Mohibur Rahman vs. State of Assam [(2002) 6 SCC 715]** it has been observed that -

“There may (however) be cases where, on account of close proximity

of place and time between the event of the accused having been last seen with the deceased and the factum of death, a rational mind may be persuaded to reach an irresistible conclusion that either the accused should explain how and in what circumstances the victim suffered the death or should own the liability for the homicide.”

Here, the time gap between the last seen point i.e. PW 2 Aruna watching accused and deceased leaving the house together cannot be said to be the conclusive evidence on the point of ‘last seen together’. Though offence against unknown person for killing unknown lady was filed by PW 12 API Mr. Tarkase on 22.10.2014 itself; yet, the disclosure about the fact that Neelam has expired came to the knowledge of PW 2 Aruna only on 24.10.2014. Even if we take the fact that Accidental Death was lodged by Dipak Thorat on 22.10.2014 itself; yet, it was around 19.30 hours. Still it was around 24 hours after PW 2 Aruna had allegedly seen accused and deceased going together. Therefore, from both the angles the said theory of ‘last seen together’ cannot connect the accused to the crime.

13 Though PW 3 Suresh – father of the deceased has corroborated the examination-in-chief of his wife – PW 2 Aruna; yet, in the cross-examination he has stated that he had not made inquiry with accused as to why he had taken so much of loan amount. He himself was not present in the house when accused and deceased left the house. Further, Neelam had

not stated anything about taking loan by the accused. But that fact was told to his wife i.e. PW 2 Aruna by Neelam. So, on both the points i.e. 'motive' as well as 'last seen theory' the testimony of this witness is not helpful at all. PW 4 Anita is on the same line. She is not even residing with PW 2 Aruna. Nilam had not disclosed to her that they were going to buy tickets for Pune on that day. PW 12 API Mr. Tarkase has deposed that he had given press note and invited persons to come and say in respect whether they had seen deceased or has any information in respect of the offence. He had given letters to the Auto Rickshaw Union. But it can be seen from the record that he did not get any response. Therefore, taking into consideration these aspects these three witnesses cannot be the appropriate and proper witnesses to prove the 'last seen theory' as well as 'motive'. When the prosecution has not discharged the initial burden, to prove that accused had gone along with deceased, question of invoking principles in Section 106 of the Indian Evidence Act will not arise. Except the bare statement of PW 2 Aruna, there is nobody to support her statement that she had seen accused going with his wife Neelam at the relevant time. When prosecution has failed to prove the last seen theory, burden never shifted on the accused to give any kind of explanation, especially the explanation about the whereabouts of Neelam. Even if for the sake of arguments it is accepted that there is some element in the evidence produced by the prosecution; yet, the prosecution has failed to

bring the quality of evidence to the extent that it can be said that offence is beyond reasonable doubt. It is well settled principle that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. This has been reiterated in **Nikhil Chandra Mondal** (supra).

14 Another circumstance, on which the prosecution intends to rely is the 'extra judicial confession'. Again in view of **Sk. Yusuf** (supra) and **Sahadevan** (supra) we can say that the extra judicial confession was weak kind of evidence and, therefore, that evidence is required to be minutely scrutinized. In order to prove the said extra judicial confession PW 2 Aruna, PW 3 Suresh, PW 4 Anita and PW 5 Vinod Khatke have been examined. All of them have stated that accused was brought from the house of his sister to the house of PW 2 and 3, then, he was assaulted and asked, as to where is Neelam and then he confessed that he has killed her. The cross-examination of PW 2 to PW 5 (referred in the foregoing paragraphs) would show that there was huge gathering of people and then there was beating by public to accused and definitely everyone who was present there would have been interested to note where Neelam had gone. It is then stated that accused gave the confession. When he was beaten and then it is extracted from him, it cannot be said that said extra judicial confession was voluntary. It does not fulfill the criteria for acceptance of an extra judicial confession laid down in

the above said authorities. This circumstance also, therefore, cannot be said to have been proved beyond reasonable doubt.

15 The further evidence which can be considered is testimony of PW
11 Savita who was the aunt of accused. She has stated that accused had gone to her house around 12.00 noon on 22.10.2014 and stayed there for about 2-4 days. But then again she had corrected herself by saying that he had left her house on the next day. But while leaving accused had kept his mobile in her house and then she has produced the said mobile phone in presence of panchas to the police. In her cross-examination, she has given many admissions. Merely because the mobile of the accused was found with her, it cannot be the circumstance proving the guilt of the accused to that extent.

16 Much has been said regarding the letter that was received by PW
2 Suresh and according to him, it is the letter given by the accused to him, wherein there is confession. At the outset, we would like to say that said letter has not been proved. It has been marked as Article 'B'. It has come on record that after the arrest of the accused on 25.10.2014, he was sent in Police Custody till 29.10.2014, then sent in Magisterial Custody and it has come on record that he was never released on bail. According to PW 3

Suresh, he received letter on 26.12.2014. Definitely, at that time the accused would have been in jail. Article 'B' with its envelope does not contain the stamp or seal of any jail. Further, there is postal stamp of one Post only, when it should have been of two Posts i.e. first is, where the letter was posted and another was, in which Post Office it was received. The charge sheet in this case was filed on 07.01.2015, but PW 12 API Mr. Tarkase has not explained as to what evidence he had tried to collect in respect of letter Article 'B'. The specimen handwriting of the accused has not been collected nor it was sent along with the disputed document for the opinion of the Handwriting Expert. PW 3 Suresh in his cross-examination has fairly admitted that he had no occasion to see the handwriting of the accused. Under such circumstance, the alleged confessional letter cannot be said to have been proved by the prosecution beyond reasonable doubt.

17 The testimony of other witnesses, even if taken independently, will not prove anything as most of them are either panchas or police officers or the persons who gave information about the death.

18 After scanning the entire evidence we conclude that the chain of circumstances was never proved by the prosecution within the principles/panchsheels laid down in **Sharad Birdhichand Sarda** (supra). The

ratio laid down in other authorities, which are relied by the learned Advocate for the appellant, is also applicable to the present case. The Trial Court wrongly held that the offence has been proved beyond reasonable doubt. Rather taking into consideration the fact that the said panchsheel has not been proved, the decision by the Trial Court was perverse and bad in law. It cannot be allowed to be sustained. The appeal, therefore, deserves to be allowed. Hence, following order.

ORDER

- 1 The appeal stands allowed.
- 2 The conviction awarded to the appellant Vishal Budhanand Thorat by learned Sessions Judge, Latur on 28.01.2016 in Sessions Case No.8/2015 by holding him guilty of committing offence punishable under Section 302 of the Indian Penal Code is hereby set aside.
- 3 The fine amount, if any, deposited, be refunded to the appellant after the statutory period.
- 4 The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. He be set at liberty, if not required in any other case.

5 We clarify that there is no change as regards the order of disposal of muddemal.

6 Pending application, if any, stands disposed of.

(Y.G. Khobragade, J.)

(Smt. Vibha Kankanwadi, J.)

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